

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

v. :

JOSEPH JORDAN, :

Defendant. :

ATTORNEY AFFIRMATION

08 Cr. 124 (DLC)

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I, Fiona Doherty, hereby declare under the penalties of perjury, pursuant to 28 U.S.C. § 1746, that:

1. I am an Assistant Federal Defender with the Federal Defenders of New York. I have been appointed by the Court to represent JOSEPH JORDAN in this action. I make this affirmation in support of a motion to dismiss Counts One and Two of the indictment as deficient or in the alternative for a bill of particulars.

2. The statements contained in this affirmation are based upon my review of the indictment, the superseding indictment, and other documents provided by the Government in discovery.

3. On March 3, 2008, Joseph Jordan was presented before the Honorable Ronald Ellis on a three-count indictment. On May 5, 2008, the defense received a copy of a superseding indictment, which contains seven additional counts. The defense understands that the Government intends to make supplemental discovery concerning these additional counts.

4. The discovery already received by the defense contains a number of e-mails and faxes, allegedly prepared by Mr. Jordan. The defense is not certain which (if any) of these communications the Government will argue violated the statutes invoked in the first two counts.

Counts One and Two also claim, however, that Mr. Jordan made an unspecified number of oral statements in telephone calls that violated the applicable statutes. See Superseding Indictment. In the discovery provided to date, it appears that the Government has provided details about one such oral statement (or set of statements) relating to Count One. This statement – an alleged threat to get to Victim-1, kill Victim-1 and “take [her] off the planet” – is recounted in a search warrant affidavit, prepared by FBI Special Agent Brandon Waller.¹ With respect to the timing of this alleged statement, the affidavit indicates only that it was made sometime between approximately December 5, 2007 and December 16, 2007. With respect to Count Two, the defense does not believe that any oral statements have been disclosed that would (if proved) constitute “true threats.”²

5. On April 16, 2008, the defense sent a written request, asking the Government to specify the communications it was relying upon in charging Mr. Jordan under the original indictment. Since then, the Government and the defense have conferred numerous times about whether the Government would be willing to provide a bill of particulars in this case. Although the Government has not declined to provide a bill of particulars, the defense has been informed that the Government will not be prepared to make a decision on this matter before the May 8,

¹ The affidavit also contains additional oral threats that Victim-1 apparently claimed were made when both she and Mr. Jordan were still in New York. The defense does not understand the Government to be alleging that these threats were communicated in interstate commerce, as required under 18 U.S.C. § 875(c).

² Although the FBI affidavit claims that Mr. Jordan made several calls to Victim-2's residence between December 28, 2007 and December 31, 2007, the affidavit provides information about only one such oral statement, which Mr. Jordan allegedly made on December 28, 2007. Mr. Jordan purportedly left a message stating that he would be leaving New York that evening for London. We are not aware if the Government intends to claim at trial that this constitutes a “true threat.”

2008 motion deadline.

WHEREFORE, it is respectfully requested that this Court dismiss Counts One and Two for lack of specificity. In the alternative, the Court should order the Government to provide a bill of particulars relating to these counts.

I declare under the penalty of perjury that the foregoing is true and accurate.

Dated: New York, New York
May 8, 2008


FIONA DOHERTY, ESQ.